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OCT 25 1943

CHARLES ELMORE CROPLEY  
CLERK

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1943**

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**No. 454**

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**ALICE BILLINGSLEY,**

*Petitioner,*

*vs.*

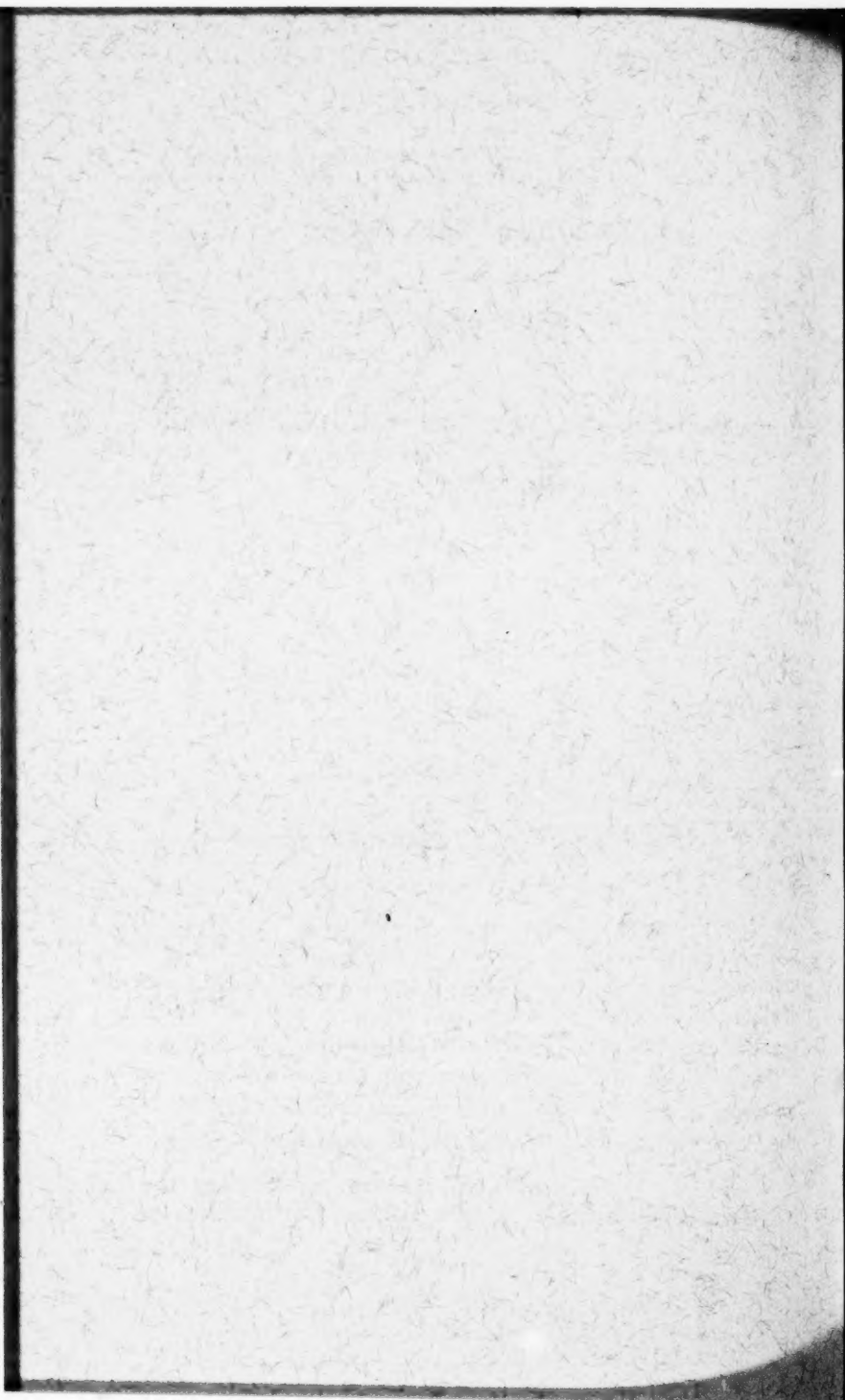
**C. B. HORRALL, CHIEF OF POLICE.**

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**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF CALIFORNIA AND PETI-  
TION FOR ORIGINAL WRIT OF HABEAS CORPUS.**

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**MORRIS LAVINE,**  
*Counsel for Petitioner.*



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

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No. 454

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IN THE MATTER OF THE APPLICATION OF ALICE BILLINGS-  
LEY FOR A WRIT OF HABEAS CORPUS.

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PETITION FOR WRIT OF CERTIORARI AND ORIGI-  
NAL WRIT OF HABEAS CORPUS.

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*To the Honorable Harlan F. Stone, Chief Justice of the  
Supreme Court of the United States, and to the Honorable  
Associate Justices thereof:*

A.

**Summary Statement of Matters Involved.**

This is a petition for certiorari to the Supreme Court of the United States.

The issue involved is whether sentence of a woman to a steel bunk, without bedding, for a period of six months, is cruel and unusual punishment forbidden by the Fourteenth Amendment to the Constitution of the United States.

The question also is whether entrapment of a woman by an officer of the law offends the Fourteenth Amendment to the Constitution of the United States, providing:

“\* \* \* No State shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The question also is whether in a case where a woman is singled out for invidious treatment by officers of the law, the treatment thus accorded violates the Fourteenth Amendment to the Constitution of the United States in denying to such person the equal protection of the laws.

The petitioner herein was arrested on a charge of violation of Section 41.05 of Ordinance 77,000 of the City of Los Angeles, which reads:

"No woman shall offer her body for the purpose of prostitution or solicit any man to have intercourse with her, for money, or agree to have carnal intercourse with any man for money."

She was arraigned on February 24, 1943, on said alleged offense in the Municipal Court of the City of Los Angeles, County of Los Angeles, State of California, and thereafter was placed on trial before a jury in the court room of Judge Arthur Guerin. She was found guilty of this charge on April 1, 1943, and remanded to the custody of the jail without bail. On April 5, 1943, she was brought up for judgment and sentence and demanded the imposition of judgment and sentence immediately, which request was denied by the court. The court then continued her incarceration over her objections and without her consent referred the matter to the Probation Department.

The petitioner came before the court on April 15, 1943, and without her consent the court ordered probation granted to her on the condition that she be imprisoned for 180 days, that she be discharged at the end of 120 days from imprisonment, and that within 48 hours after her release from custody she leave the State of California and

remain out of the state during the entire period of probation.

Petitioner presented to the court during her hearing that her judgment and conviction were void; that she was entrapped by a man working for the Police Department who received pay for so doing; that she was being prosecuted and singled out for invidious treatment because she was politically active in endeavoring to maintain an escort bureau in the City of Los Angeles.

Thereafter petitioner was immediately returned to the Lincoln Heights jail, where she was forced to sleep on a steel bunk, without bedding or other normally human conditions.

Petitioner appealed to the Appellate Department of the Superior Court, which affirmed the trial court's judgment, except that it ordered the petitioner to serve the 180 days in jail and revoked the trial court's order granting probation and the order imposing banishment from the state as a condition of probation.

Petitioner then filed a petition for writ of habeas corpus in the Superior Court of the County of Los Angeles, State of California, the first court having jurisdiction, challenging her imprisonment and sentence in jail as being violative of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and the equal protection of the laws guaranteed by that amendment. This petition was denied without hearing, and a new petition was filed in the District Court of Appeal of the State of California, Second Appellate District, and that petition was denied without hearing.

Thereafter a petition was filed in the Supreme Court of California, which challenged the judgments and sentences of petitioner as being void under the Fourteenth Amendment. The petition was denied by the Supreme Court on September 2, 1943.

## B.

Petitioner is suffering cruel and inhuman punishment in that she is being confined in the Lincoln Heights jail where she is required to sleep on a metal bunk, made of a solid sheet of steel, without mattress or pillows, which causes extreme torture, pain and suffering,—or to stand, as the bunks are too close together to allow sitting; that each side of said bunks are curved over solid steel rods so that one attempting to sit on the edge thereof, even though it is impossible to sit in an upright position, is forced to sit on this steel rod; that there are no sanitary measures being given to these metal bunks, and no provisions are made to guard against disease and illness being contracted from other persons who are assigned to the same quarters; that the only covering on these steel bunks is a thin cotton pad, so matted down from constant use that it is not more than the width of a person's finger, and is lumpy and stringy, and serves no purpose whatever as a protection from the hardness of the steel frame; that the conditions of said quarters are filthy, vile and inhuman.

That Dr. Samuel M. Marcus, a physician and surgeon, examined petitioner and gave his opinion that her physical condition was serious and resulted from her confinement treatment.

That the punishment thus being inflicted upon petitioner is not the punishment provided by due process of law and is not authorized by law; that therefore the judgment and sentence being carried into execution is not the judgment and sentence of the court; that the judgment now being carried out is affecting petitioner mentally and physically and is permanently impairing her health, and is contrary to law and null and void, and is in violation of the Fourteenth Amendment to the Constitution of the United States

and is forbidden by due process of law under the Constitution of the State of California.

That your petitioner is denied the equal protection of the laws in this: That she has been singled out for invidious treatment by officers of the State of California; that prior to her sentence in this case she had not suffered any punishment by reason of any judgment or sentence heretofore pronounced; that the charge against her in this case was the alleged offense of offering herself for prostitution in violation of Section 41.05 of Ordinance 77,000 of the City of Los Angeles; that said ordinance has been on the statute books of Los Angeles for several years, and petitioner is informed and believes, and on such information and belief alleges that she is the only person who has been sentenced to the maximum period of six months in jail for the offense of offering upon the first offense; that the customary sentence under such a charge for the first offense is usually a small fine, to-wit, \$25.00, and that only where there have been repeated convictions does the court impose jail sentences; that your petitioner is not in such classification.

That the State of California is estopped from enforcing the judgment against petitioner by reason of the fact that, as petitioner is informed and believes, and therefore upon such information and belief alleges, her arrest was brought about through the connivance, trickery and fraud of agents of the state seeking to bring about her arrest and conviction; that this fraud and trickery consists of the following:

That an undercover agent of the City of Los Angeles working in the Police Department, named Charles Morgan, solicited the acquaintance of petitioner some time in January, 1943, about a month before petitioner was arrested; that he thereafter pretended extreme friendship and fondness for petitioner, and made love to her, representing himself to be a single man, and that he proposed marriage

to petitioner; that in truth and in fact the said Morgan was a married man and the father of children, all of which he fraudulently concealed from petitioner; that he knew he could not marry petitioner, but that said Morgan made all of said protestations of affection and love for petitioner and said proposal of marriage to gain the confidence and trust of petitioner; that said Morgan lived in the City of Long Beach, California, and he represented to petitioner that he was a personal friend of District Attorney Fred Howser who formerly lived in Long Beach, and that he had known said Howser since he, Howser, was fifteen years of age, and that through said Fred Howser said Morgan could aid petitioner in another matter which was pending in the Appellate Department of the Superior Court; that said false representations were made to petitioner for the purpose of winning her confidence and trust.

That the said Morgan saw petitioner from three to five times a week during the period prior to her arrest; that he took her to theatres and to dances, and that on one occasion he took her to a dance at the Hilton Hotel in Long Beach, California.

That said Morgan represented to petitioner that he had a wealthy friend, a man who would finance the publication of a book which petitioner had written, and that he then arranged for her to meet this alleged wealthy man at the Alexandria Hotel in Los Angeles on the evening of February 23, 1943; that said Morgan and this supposedly wealthy man, who went by the name of Mr. James, but who was in reality A. F. Gunn, a police officer of the City of Los Angeles, ordered dinner and while waiting for the dinner to be served petitioner read portions of her book to them; that before the dinner was served said Morgan excused himself and left petitioner with Officer Gunn, who had falsely represented himself to be a Mr. James from Chicago, and falsely represented himself to be a man of



wealth, and who told petitioner that he was highly interested in her book and in financing the publication of the same.

That all of these said statements and representations were false and fraudulent and designed to bring about the arrest of petitioner and to entrap her into the appearance of committing an offense.

That at no time during the trial of the action did the state produce said Charles Morgan, nor did Police Officer Gunn, who had represented himself as Mr. James to petitioner, disclose to the court and jury that the arrest and conviction of petitioner was the result of a plot and plan between said Morgan and said Gunn to bring about the arrest, conviction and sentence of petitioner.

That petitioner has been in the business of being an escort for men to social functions and entertainments; that there has been a drive on by the Police Department of the City of Los Angeles, and particularly by the Police Commission of the City of Los Angeles, to prevent her from engaging in a perfectly lawful and honorable business, and that it was the object of the Police Department falsely to bring about her arrest and conviction by entrapment and unlawful methods through the instrumentality of said Charles Morgan as an undercover agent of the Los Angeles Police Department and said Officer Gunn.

That each and all of these methods are contrary to due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, and that the judgment and sentence is therefore null and void.

### C.

#### **Reasons Relied On for the Allowance of the Writ.**

1. Petitioner is suffering from cruel and unusual punishment not provided for by the statutes of the United States or of the State of California.

2. Cruel punishment is defined as torture. The use of steel bunks for women, without proper equipment, is torture of the worst kind. The Fourteenth Amendment, providing for due process of law in the United States, forbids such barbarous treatment by the states, and such treatment is not sanctioned by due process.

3. Entrapment by officers of the law has always been regarded as contrary to the American principles of justice and is forbidden by the Fourteenth Amendment to the United States Constitution.

4. Invidious treatment in singling out a defendant offends the equal protection of the laws. This Court has always looked to protect the individual against the invidious powers of the state.

#### D.

#### **Cases Relied On to Support Jurisdiction.**

- Chambers v. Florida*, 309 U. S. 227, 84 L. Ed. 716.  
*Mooney v. Holohan*, 294 U. S. 103, 79 L. Ed. 792.  
*Ex parte Kemmler*, 34 L. Ed. 519.  
*Hurtado v. California*, 110 U. S. 516, 28 L. Ed. 232.  
*Wilkerson v. Utah*, 99 U. S. 130, 135, 25 L. Ed. 345, 347.  
*Ex parte Lange*, 18 Wall. (U. S.) 163, 85 L. Ed. 872.  
 Ann. Cas. 705.  
*McDonald v. Com.*, 73 Am. St. Rep. 293, 53 N. E. 874.  
*State v. Driver*, 78 N. C. 423.  
*State v. Griffin*, 84 N. J. L. 429, 87 Atl. 138 (affirmed in 90 At. 259).  
*Mitchell v. State*, 82 Md. 527, 34 Atl. 247.  
*Stagway v. Riker*, 84 N. J. L. 201, 86 Atl. 440.  
*Central of Ga. R. R. Co. v. R. R. Comm.*, 161 Fed. 925.  
*Ely v. Thompson*, 3 A. K. Marsh, 774.  
*State of La. ex rel. Garvey v. Whitaker*, 48 La. Ann. 527.

*Powell v. Alabama*, 287 U. S. 45, 77 L. Ed. 158.  
*Moore v. Dempsey*, 261 U. S. 86, 67 L. Ed. 543.  
*Chambers v. Florida*, 309 U. S. 227, 84 L. Ed. 716.  
*White v. Texas*, 310 U. S. 530.  
*Maxwell v. Dow*, 176 U. S. 581, 44 L. Ed. 597.  
*Yick Wo v. Hopkins*, 118 U. S. 374.  
*Smith v. Texas*, 311 U. S. 128, 85 L. Ed. 84.  
*Hysler v. Florida*, 86 L. Ed. 932.

Respectfully submitted,

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